



Human Tissue (Authorisation) (Scotland) Act 2019

2019 asp 11

PART 3

AUTHORISATION OF REMOVAL AND USE OF PART OF BODY OF DECEASED PERSON

CHAPTER 4

AUTHORISATIONS: GENERAL

19 Power to make provision about decisions

- (1) The 2006 Act is amended as follows.
- (2) After section 10B insert—

“10C Power to make provision about decisions

- (1) The Scottish Ministers may by regulations make provision about the manner in which, or to whom—
 - (a) an express authorisation by virtue of section 6(1) may be given,
 - (b) an opt-out declaration by virtue of section 6B(1) may be made,
 - (c) an authorisation by virtue of section 8(1) may be given,
 - (d) a declaration by virtue of section 8B(1) may be made,
 - (e) an authorisation by virtue of section 16F(1) may be given.
- (2) Regulations under subsection (1) may modify this Act.”.
- (3) In section 59(3) (regulations subject to affirmative procedure), after paragraph (ab) insert—
 - “(ac) regulations under section 10C(1);”.

20 Withdrawal by person who is blind or unable to write

- (1) The 2006 Act is amended as follows.
 (2) After section 10C insert—

“10D Withdrawal by person who is blind or unable to write

- (1) This section applies where a person who is blind or unable to write decides to withdraw—
- (a) an authorisation by virtue of—
 - (i) section 6A(1),
 - (ii) section 6H(5),
 - (iii) section 8A(1),
 - (iv) section 8D(4),
 - (v) section 10(1B),
 - (vi) section 10A(6),
 - (b) a declaration by virtue of—
 - (i) section 6C(1),
 - (ii) section 8C(1).
- (2) The withdrawal may be—
- (a) in writing by another person, and
 - (b) signed by an adult (a “signatory”).
- (3) A withdrawal that is signed by a signatory must—
- (a) be witnessed by one witness, and
 - (b) contain a statement made in accordance with subsection (4).
- (4) The statement must—
- (a) state that the person, in the presence of the signatory and the witness, expressed the intention to withdraw the authorisation or, as the case may be, the declaration,
 - (b) state that the person requested the signatory to sign the withdrawal,
 - (c) be signed by the signatory and the witness in the presence of—
 - (i) each other, and
 - (ii) the person.”.
- (3) In section 6, subsections (3) to (5) are repealed.
 (4) In section 8, subsections (3) to (6) are repealed.

21 Removal and use of part of body for quality assurance purposes

In section 3(1)(d) of the 2006 Act, after “audit” insert “or quality assurance”.

22 Removal of part of body of deceased person: further requirements

- (1) Section 11 of the 2006 Act is amended as follows.
 (2) In subsection (1)(b), after “person” insert “(or description of person)”.

Status: This is the original version (as it was originally enacted).

- (3) In subsection (2), after “person” insert “(or description of person)”.
- (4) In subsection (3), paragraph (b) is repealed.
- (5) In subsection (4)—
- (a) in the opening words, the words from “(and,” to “the practitioner)” are repealed,
 - (b) at the beginning of paragraph (a), insert “if the person is a registered medical practitioner,”,
 - (c) after paragraph (a), insert—
 - “(ab) if the person is not a registered medical practitioner, that a registered medical practitioner, by personal examination of the body, is satisfied that life is extinct,”,
 - (d) in paragraph (c)—
 - (i) after “removal” insert “and use for the purpose in question”,
 - (ii) for “7, 8, 9 or, as the case may be, 10” substitute “6D, 6E, 6F, 6G, 6H, 8, 8D, 10 or, as the case may be, 10A”.
- (6) After subsection (4), insert—
- “(4A) For the purposes of subsection (4)(c), the person who proposes to carry out the removal is entitled to be satisfied that the removal and use for the purpose in question is authorised in accordance with the section in question if subsections (4B) and (4C) apply.
- (4B) This subsection applies if the person who proposes to carry out the removal considers there to be an appropriate record that—
- (a) there is in force an authorisation by virtue of section 6, 6D, 6E, 6F, 6G, 6H, 8, 8D, 10 or, as the case may be, 10A as respects—
 - (i) the deceased person, and
 - (ii) the removal and use of the part for the purpose in question,
 - (b) the authorisation was given in accordance with the section in question,
 - (c) there is in force—
 - (i) in the case of a deceased adult, no opt-out declaration by the adult as respects removal and use of the part for the purpose in question,
 - (ii) in the case of a deceased child, no declaration by virtue of section 8B(1) by the child as respects removal and use of the part for the purpose in question,
 - (d) in the case of a deceased adult who is deemed to have authorised the removal and use of a part of the adult’s body for transplantation by virtue of section 6D, the deceased adult was not—
 - (i) a non-resident adult, or
 - (ii) an adult incapable of understanding the nature and consequences of deemed authorisation,
 - (e) a health worker has carried out inquiries—
 - (i) in the case of a deceased adult, in accordance with section 16H(2), and
 - (ii) in the case of a deceased child, in accordance with section 16I(2).

Status: This is the original version (as it was originally enacted).

(4C) This subsection applies if the person who proposes to carry out the removal has no reason to believe that—

- (a) there is in force no authorisation by virtue of section 6, 6D, 6E, 6F, 6G, 6H, 8, 8D, 10 or, as the case may be, 10A as respects—
 - (i) the deceased person, or
 - (ii) the removal and use of the part for the purpose in question,
- (b) the authorisation was not given in accordance with the section in question,
- (c) in the case of an authorisation given by a person other than the deceased person, the person who gave the authorisation was not entitled to do so,
- (d) the deceased person would be unwilling in the circumstances for the part to be removed and used for the purpose in question.”.

(7) Subsection (5) is repealed.